

Deposition of David McDowall, Ph.D.

**Oregon Firearms Federation, Inc., et al. v. Kotek, et al.
(Consolidated)**

April 7, 2023



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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PENDLETON DIVISION

OREGON FIREARMS FEDERATION,)
INC., et al.,)
Plaintiffs,) Civil No.
v.) 2:22-cv-01815-IM
(Lead Case)
TINA KOTEK, et al.,) Civil No.
Defendants.) 3:22-cv-01859-IM
(Trailing Case)
(Continued)) Civil No.
) 3:22-cv-01862-IM
(Trailing Case)
)
) Civil No.
) 3:22-cv-01869-IM
(Trailing Case)
)

* VIDEOCONFERENCE *

DEPOSITION UPON ORAL EXAMINATION

OF EXPERT

DAVID McDOWALL, PH.D.

Witness located in:

Niskayuna, New York

* All participants appeared via videoconference *

DATE TAKEN: April 7, 2023
REPORTED BY: Tia B. Reidt, Washington RPR, CCR #2798
Oregon # 22-0001

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1 _____
2 (continued))
3 MARK FITZ, et al.,)
4 Plaintiffs,)
5 v.)
6 ELLEN F. ROSENBLUM, et al.,)
7 Defendants.)
8 _____)
9 KATERINA B. EYRE, et al.,)
10 Plaintiffs,)
11 v.)
12 ELLEN F. ROSENBLUM, et al.,)
13 Defendants.)
14 _____)
15 DANIEL AZZOPARDI, et al.,)
16 Plaintiffs,)
17 v.)
18 ELLEN F. ROSENBLUM, et al.,)
19 Defendants.)
20 _____)
21)
22)
23)
24)
25)

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1 APPEARANCES

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1 EXAMINATION INDEX

2 EXAMINATION BY: PAGE

3 Mr. Williamson 5

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5 EXHIBIT INDEX

6 EXHIBIT DESCRIPTION PAGE

7 EXHIBIT 93 Expert Report of David 5
8 McDowall, Ph.D.

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1 Q. And for that particular survey, were they
2 looking at defensive gun uses?

3 A. Defensive gun uses are just part of what they
4 collect. They collect an enormous amount of data.
5 Once a crime has been reported, they collect all kinds
6 of details about it, about the injuries people
7 suffered, for example, and whether they had loose
8 teeth, things after being attacked. Those are the
9 kinds of things that the Census Bureau would collect,
10 and part of that is how they responded to crimes. And
11 that's where the defensive gun uses come in.

12 Q. And what was their estimate?

13 A. It's -- I know of four surveys that have been
14 done, and they're all kind of -- I mean, four estimates
15 from surveys from a few years ago. They're kind of
16 dated, but they range from about 65,000 to about
17 120,000, I think.

18 Q. And it's based off of this particular dataset?

19 A. Yeah. A different -- different years of the
20 data -- surveys ongoing, and so there's an enormous
21 amount of data spanning many years.

22 Q. And while we're on this subject, and before I
23 lose my train of thought about Professor English, could
24 we pull up our Exhibit Number 21, which is Professor
25 English's survey.

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1 Let me know when you're able to open that up,
2 sir.

3 A. Okay. Let me see if I can find it here.

4 Well, I'm having difficulty finding it. I
5 have read the report and remember it well, so maybe we
6 can just -- unless there are real details that you want
7 to -- me to comment on.

8 Q. I think we can talk about it in general terms.

9 In -- the report that I have in front of me
10 includes the expanded report that was issued in May of
11 2022.

12 Does that sound right?

13 A. Yeah, an SSRN?

14 Q. Yes.

15 Did you have -- did you review the type of
16 survey that was done, and if so, can you tell me what
17 you think about the survey strategy?

18 A. Well, this is one area where I agree with
19 Professor Kleck who didn't have a very high opinion of
20 it. From the sound of it, it's not like a
21 probability-based survey. He keeps saying throughout
22 that document, "We can generalize to the population of
23 the United States and things," but there are -- a
24 survey researcher would give more description.

25 The nature of how that sample was drawn, it

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1 sounds like it's a voluntary sample that was
2 constructed to be demographically the same as
3 the United States population, which is just not the
4 same as a probability sample that allows that kind of
5 generalization. So that was the impression. It may
6 have been that it was something about that sample that
7 was better than that, but I think that if that were
8 true, he would have said so.

9 It just does not sound like anything more than
10 a voluntary sample of people on the Internet, and I
11 think that that's what Professor Kleck said too in his
12 deposition. That was a -- that was what I thought when
13 I read it the first time too.

14 Q. And so you would have a similar criticism
15 then?

16 A. Yeah. I just -- I don't think that that was
17 one of the better ones. Professor Kleck had a long
18 list of surveys, like you have mentioned, and most of
19 those are done by reputable polling agent- --
20 companies. And most of them do have samples that allow
21 generalizations to the United States population, so of
22 all of them, I would say that's probably the weakest
23 collection.

24 Q. Do you recall if Professor English's
25 underlying data has been made public so that folks like

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1 yourself can take a look at it?

2 A. No, I didn't know that.

3 Q. No, the question is --

4 A. Oh, do I know whether it was?

5 Q. Yes.

6 A. Yeah, I don't know whether it was. I doubt
7 it, really, because I would think that there would be
8 confidentiality concerns involving the participants. I
9 don't think that university IRBs, institutional review
10 boards, guard the integrity of researches done at a
11 university would allow that kind of -- that kind of
12 thing to happen.

13 Q. What additional information would you find
14 helpful in critiquing the survey that Professor English
15 did?

16 A. I think I would need a much fuller description
17 of the nature of the sample and how it was constructed.
18 And just saying that it's nationally representative is
19 pretty much meaningless. How did they get these
20 people? Do they represent -- is there some probability
21 basis for it?

22 So if one were to generalize to the
23 United States or any population, you need some kind of
24 connections, probability of selecting these people so
25 you can weight them, you can make reasonable inferences

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1 based on that. So I would need something about the
2 probability basis for that survey, something to
3 convince me it was not just -- I think a -- it looked
4 like the kind of thing commercial businesses do to
5 provide survey participants for -- you know, for giving
6 their impressions of commercial products and the like.

7 And also there are some types of uses of
8 Internet surveys with volunteers that are useful that
9 compare people within the survey. What he wants to do
10 is generalize beyond that. There really needs to be
11 some kind of description of how that would be possible.

12 Q. Okay.

13 A. I think that study would have lots and lots of
14 problems getting published because --

15 Q. (Speaking simultaneously.)

16 A. -- any competent person, any competent
17 reviewers of any competent journal would say, "This is
18 not enough."

19 Q. Are there any comparable surveys, like the
20 National Crime Victimization Survey, that were done by
21 real examiners who were having face-to-face exchanges?

22 A. No, I don't think so.

23 Q. That's the only one you're aware of?

24 (Reporter clarification.)

25 BY MR. WILLIAMSON:

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C E R T I F I C A T E

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3 STATE OF WASHINGTON

4 COUNTY OF PIERCE

5

6 I, Tia Reidt, a Certified Court Reporter in and
 7 for the State of Washington, do hereby certify that the
 8 foregoing transcript of the deposition of David
 9 McDowall, Ph.D., having been duly sworn, on
 10 April 7, 2023, is true and accurate to the best of my
 11 knowledge, skill and ability. Reading and signing was
 12 requested pursuant to FRCP Rule 30(e).

13 IN WITNESS WHEREOF, I have hereunto set my hand
 14 and seal this 12th day of April, 2023.

15

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17

18

/S/ Tia B. Reidt
 Tia B. Reidt, RPR, CCR # 22-0001
 NOTARY PUBLIC, State of
 Washington.
 My commission expires
 5/15/2026.

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